

## REPORT

OF

## THE SECRETARY OF STATE,

IN RELATION TO

*The claim of A. A. Frazier and A. Baker, to indemnity for the seizure of the brig Douglass by a British cruiser:*

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MAY 12, 1848.

Read, and ordered to be printed.

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DEPARTMENT OF STATE,

Washington, May 11, 1848.

The Secretary of State, in answer to a resolution of the Senate of the 2d of February last, referring to him "the memorial of A. A. Frazier, for himself and Alvin Baker, owners of the brig Douglass, praying indemnity for losses caused by the alleged wrongful seizure" of that vessel "by a British cruiser," and directing him "to communicate to the Senate the originals, or copies of all depositions and other documents and papers in his department relating to said case; and likewise such correspondence as may have been had with the British government, or its officers, and our own, in relation thereto, which, in his opinion, may be made public, consistent with the public interests," &c., respectfully report: That he has caused a careful examination to be made of the files of this department, from which it appears that all the documents, papers, and correspondence, in its possession, relating to the case of the Douglass, have already been published in two executive documents; the first document, No. 115, communicated to the House of Representatives on the 3d of March, 1841, and the second, Senate Document, No. 377, of June 6th, 1846.

The Secretary of State has the honor of transmitting to the Senate, for their convenience, a memorandum containing particular references to the pages of the printed documents in which the papers relating to the Douglass will be found. He would transmit the original papers, as this seems to have been contemplated by the Senate, but many of them are contained in bound volumes, which renders this almost impracticable.

The Secretary of State is, also, instructed to "make a report on said case as presented to his department." On this branch of the

resolution he would respectfully observe that, before he came into the department, the claim which had been urged by his government in behalf of Messrs. Frazier & Baker, against the government of Great Britain, for indemnity on account of the capture and detention of the brig "Douglass," in October, 1839, had been abandoned; and it has been impossible for him, consistently with the performance of other duties, to give the subject such a thorough examination as he could have desired. He is very clearly of opinion, however, that the "Douglass" was captured and detained in violation of the law of nations and the rights of the American flag, and it was, therefore, the duty of this government to hold that of Great Britain responsible. Indeed, the illegality of this capture has been admitted by the British government. Whether the government of the United States, by abandoning the claim for indemnity against the British government, has, under all the circumstances, rendered itself responsible to the claimants, and, if so, what ought to be the amount of this indemnity, are questions on which, under his construction of the resolution, he is not required to express an opinion. Indeed these question would seem more appropriately to belong to the legislative than to the executive branch of the government.

Respectfully submitted by

JAMES BUCHANAN.

P. S.—The memorial is herewith returned.

#### REFERENCES.—CASE OF THE "DOUGLASS."

HOUSE Doc. No. 115, } 26th Con. 2d sess.	pp. 332, 335.
"	pp. 352 to 362, inclusive.
"	pp. 65, 66, 67, to 70, inclusive.
"	pp. 90 to 92, inclusive.
SENATE Doc. No. 377, } 29th Con., 1st sess.	pp. 42, 43.
"	pp. 51 to 54, inclusive.
"	pp. 57, 58.
"	pp. 102, 103.
"	pp. 107 to 112, inclusive.
"	pp. 115, 116.
"	pp. 118, 119, to 127, inclusive.
"	pp. 11, 12.
"	pp. 160, 161.
"	pp. 164.
"	pp. 167, 168.
"	pp. 181, 182.

*To the Honorable the Senate and House of Representatives:*

The memorial of A. A. Frazier, of Boston, Massachusetts, a citizen of the United States, for himself and Alvin Baker, a citizen of the United States,

**HUMBLY SHOWETH :**

That in the year eighteen hundred and thirty-eight, he, with Alvin Baker, were joint owners of the brig Douglass, of Duxbury, registered vessel of the United States. The said brig sailed on a voyage to the island of Cuba, from the port of Boston, with a cargo under the command of Alvin Baker, as master, and arrived at Havana, where, the said brig still being in good condition and the property of said Baker and your petitioner, the said master, for the benefit of the owners, made a charter party with one Charles Brown, merchant of the city of Havana, by which he (Baker) agreed to take a cargo of goods for him to the coast of Africa, and thence to sail to the Cape de Verds and to bring back a cargo of salt to the Havana, for the price and reward stipulated in the said charter party, a copy of which is now on the files of the State Department, and to which your memorialist craves leave to refer. Your memorialist also begs leave to state, that all legal steps proper to the occasion having been taken, the brig Douglass did sail on her said freighting voyage, on or about the 27th November, 1838, and reached the neighborhood of the coast of Africa; that a majority of the crew and the master were citizens of the United States; that she was proceeding on her lawful voyage carrying freight, with the flag of the United States flying, as evidence of her nationality, and was in all things conforming to the law of nations and of the United States.

But so it was, that a certain cruiser voyaging in those latitudes and belonging to the government of Great Britain and Ireland, whose name your memorialist does not now remember, and bearing the English flag, being there, as your memorialist is informed, as a public armed vessel, cruising under the instructions of the government of Great Britain and commanded by a commissioned officer of the navy of that Kingdom, did arrest the said brig, she then being upon her lawful voyage and upon the high seas. The commander of the said cruiser sent on board the said brig an officer of the British navy and a crew, who took possession of the said brig against the will and desire of the master and others, officers and crew of the said brig, and did hold her by force of arms as a prize.

The master being thus dispossessed of the command, the brig was, by order of the commander of the captors, kept away before the wind, and her destination and voyage changed and broken up. For eight days the officers and crew of the English cruiser retained possession of the brig, running her to the leeward all the while, and committing, under the orders of their officers, depredations, insults, and outrages too numerous to be related. Your memorialist avers, that, disregarding the papers of the said brig and the flag of the United States and the other evidences of nationality presented by

the master and crew to the English officers, he persisted at all times during these said eight days in keeping his forcible possession and command, both over the brig and her officers and crew.

By his orders, also, the hold of the said brig was broken open and her cargo overhauled, damaged, and displaced; many things broken open, and great damage done carelessly, recklessly, and wilfully by the said captors; also, on and after investigation, it appeared that many things of said cargo had been taken and appropriated by the said captors, and were never returned, but were plundered by them from the said brig; and the said prize crew remained during the whole time in a beastly and turbulent state of intoxication.

Your memorialist also states, that these English captors pretended to be engaged in "the suppression of the slave trade," and that after those eight days, during which they retained the possession of the vessel, they released her from custody, and the officer of the navy and his crew left her upon the high seas, at the same time leaving the cargo greatly damaged and much of it destroyed and plundered, and the vessel greatly injured by their wanton manner of using her while they retained her in possession.

Your memorialist further states, that on the coast of Africa, as he is informed, certain winds prevail, generally having one direction, and so constant that during certain seasons of the year they may be relied on with certainty, and called the trade winds, but which in that longitude are very light.

Your memorialist presents, that when the seizure of the brig took place, she was on her way to her proper port, and had a position so well to the windward of it, that she was certain to reach it in a very short time and without difficulty, unless, as in this case, an interposition not unusual to a voyage of an American merchantman should take place, but being carried to the leeward by the aforesaid cruiser, when she was abandoned by the captors it became necessary to beat up to the windward in order to make her destined port. The trade winds being always light, there, it was a work of time, and your memorialist is informed that one month was spent in regaining a position equivalent, as regards her voyage, to the one she held when she was thus illegally seized and carried to leeward. All of which deviation was the cause of great immediate loss and expense to your memorialist, and also, consequently, of much greater losses.

Your memorialist further presents that, when the brig had thus regained her position, the fatigue and exposure consequent on these illegal doings, and beating up in such a climate against the light trades, the crew all became sick, and many in a dying state, so that they were not able to work the vessel; the captain also was prostrated by a *coupe du soleil*, which deprived him of reason; and your memorialist states that ever since then the master of the brig has been sick, and incapacitated from supporting his family and himself, and, in the opinion of medical men, will remain an invalid for life. And, further, the said brig, incapacitated by all these misfortunes consequent on this illegal seizure, was not able

to proceed on her voyage with that further celerity usual in such cases; it was impossible to procure seamen on the coast to navigate the vessel, and she had to continue her voyage in a distressed condition, with disease and death among the crew. All these things, so accumulated, caused such detention that the Douglass arrived at the conclusion of the voyage stipulated in her charter party, viz: at the Havana, after a voyage of eight months, when the usual time required for such a voyage, with a vessel of the capacities and qualities of the Douglass, does not exceed four months, and during this voyage the crew had become so weakened by disease and death, that only two men were fit for duty when she arrived at the Havana.

Your memorialist would further state that the depositions of the survivors of the crew were taken by the United States consul, Mr. Trist, as also the proper protests and other documents necessary, and were transmitted to the Department of State, and the originals or authentic copies of the same are now on file in that department, to which he begs leave to refer.

Your memorialist states that when the charter party was made with Charles Brown that he was a merchant in good repute, and solvent, and able to fulfil his engagements, and so continued until long after the usual duration of a voyage similar to that of the Douglass; but, two weeks before said brig arrived, Brown gave way under the various losses, and became insolvent; and your memorialist, besides his other great losses, also lost the stipulated freight.

The direct losses sustained by your memorialist, without including the merely indirect ones sustained from this illegal detention of the brig, amounted to five thousand dollars, as he estimates it, while his indirect loss was near treble this sum. Your memorialist, on hearing from his correspondents, &c., of these things, made representations to the Department of State of the illegal acts thus done, under authority of the British government, and of the loss of property he had sustained by the capture, detention and plunder, before mentioned; and he accompanied his representations by the documents heretofore referred to, and necessary to substantiate his claim, and the same, or copies thereof, still on the files of the State Department, he prays may be inspected by this honorable body.

In consequence of these representations, a correspondence was entered into between the American government and that of England, respecting these outrages, and the claim of your memorialist to indemnity. Your memorialist, being now in Boston, has not the means of fixing the dates of this correspondence, or of referring to it, save in general terms from memory. This correspondence continued between the two governments for some time, until the British government, from inspection of the facts of the case, and, as your orator supposes, from the reports of their own officers, became satisfied that they had committed an outrage upon the rights and property of your memorialist, as well as an insult upon the flag and honor of the United States; and the said British government directed a communication to the Executive of the United States, in which they admit the illegality of their conduct, and the legality of your

memorialist's claim for indemnity, for the losses by him sustained; and offered to the government of the United States to pay them the same, if they would insist upon it. So important was this matter viewed in its bearings, that the President of the United States, in his annual message to Congress, in December, 1843, says: "I am happy to inform you that the cases which have arisen, from time to time, of the detention of American vessels, by British cruisers, on the coast of Africa, under pretence of being engaged in the slave trade, have been placed in a fair train of adjustment; and, in the case of the Douglass, her Majesty's government has expressed its determination to make indemnity."

Your memorialist is informed that, about this time, a treaty was arranged between the two governments, called the treaty of Washington; and that, notwithstanding the offer of the British government and the message of the President publicly announcing that fact, the then Secretary of State prepared a despatch to the government of Great Britain, in which he officially declined to make the demand upon that government to pay the aforesaid indemnity.

And your memorialist avers that he never, in any form, has received from the government of Great Britain any indemnity for his losses in this matter.

Your memorialist would represent that, the Executive having thus abandoned his claim and refused to exercise the power of the government in the protection of his property from an admitted wrong, he found himself in a perfectly abandoned position, outraged, plundered, and tyrannized over by a great nation, too powerful for him as an individual to compel to do him justice. The Executive of this country, after obtaining an acknowledgment of his rights, had denied to make the simple demand which would have restored to your memorialist a portion of his pecuniary loss, and this from no reason or cause affecting the legality or justice of his case, and no ostensible compensation to the nation at large for the indignity offered. Your memorialist avers that since this he has, at great expense, been continually, by himself and his counsel, bringing this matter before the Executive at each successive change of incumbents, hoping that the evident justice of his claim would induce favorable action. These hopes have proved fallacious; and finally, after a full and laborious re-examination of the matter by the present administration, he was informed that the executive did not feel willing to take the responsibility of making a demand on Great Britain after a preceding administration had given that government an answer which, by them, must be considered as definite on our part; and your memorialist appends the final decision of the secretary as communicated by him.

Your memorialist again avers that at all times during the said voyage, from its beginning to its end, the Douglass was engaged in a lawful trade, and in no respect was violating any law of the United States or of nations, and that she continually was the property of citizens of the United States.

Your memorialist would also respectfully represent that the spoilers of his fortunes have acknowledged the wrong, and would

have reimbursed him had the government of the United States made the demand; that this government refused so to do, and that this refusal has deprived him of the recompense for his losses, and the advantage he could have derived from investing and drawing interest on his property from the date of the offer by the government of Great Britain. And your memorialist respectfully prays that Congress may grant to him indemnity to cover the losses which he has sustained in this behalf, consequential on the acts of the executive of the United States.

Your memorialist further represents that the files of the State Department contain the documentary evidence and correspondence heretofore taken, or had in respect to this claim, and which substantiate in substance and spirit all the allegations in this memorial made, and he prays that this honorable body may be pleased to call upon the State Department for copies of the same, or may take such steps to examine the same as shall satisfy them of the truth of these allegations; and that your honors will grant the relief prayed for. And your memorialist will ever pray.

A. A. FRAZIER.

Boston, *January 20, 1848.*

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And on this twentieth day of January, in the year eighteen hundred and forty-eight, before me the above signed A. A. Frazier made solemn oath that the facts in the above memorial are true to the best of his knowledge and belief.

[L. s.] Witness my hand and seal.

CHAS. LEVI WOODBURY,  
*Commissioner U. S. circuit court, Massachusetts district.*